MAY 10 PAGE 15

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
MAY 4 1984
ALEXANDER L. STEVAS
CLERK

NO. 83-6527

FREDERICK KIRKPATRICK
Petitioner

versus

STATE OF LOUISIANA
Respondent

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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(1)

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The Opposition to Petition for Writ of Certiorari (herein Opposition) filed herein by the State of Louisiana contains factual as well as legal inaccuracies, which uncorrected could lead the Court to erroneous conclusions. This reply is limited to the factual and legal matters mistated in the Opposition and does not re-assert any position previously set forth in the Petition for Writ of Certiorari (herein Petition).

FACTUAL INACCURACY

The State of Louisiana contends that:

> It should be noted that there were no objections in the record concerning the court's response to either of the jury questions. Opposition, page 2.

The record reflects that the following colloguy occurred between trial counsel and the trial court concerning the court's response to the question of the jury, "According to the law, does life mean until natural death, or does it mean a predetermined number of years?"

> By Mr. Ford: Your Honor, before the jury comes back, and out of an abundance of caution, I would like to object to the statement that the court has indicated that it will make to the jury.

By the Court: Objection is noted.

Petition, Appendix B, pp. 9-10.

Objection to the court's answer to the jury was preserved at the trial court and also on direct appeal to the Louisiana Supreme Court. Petition, Appendix A, pp. 20-22. The Statement to the contrary by the State of Louisiana is demonstrably inaccurate.

LEGAL INACCURACY

The State of Louisiana states that California v. Ramos, _____U.S. _____, 103 S. Ct. 3446, 77 L. Ed. 2d. 1171 (1983) does not mandate that a capital sentencing jury be advised of the term of a life sentence. Ramos clearly rested on the proposition that whatever information was deemed relevant by a state legislature in a capital sentencing procedure, the sentencer must not have rested its devision on erroneous or inaccurate insormation. California v. Ramos, _____ U.S. _____, 103 S. Ct. 3446 at p. ____, 77 L. Ed. 2d. 1171 (1983), citing Gardner v. Florida, 430 U. S. 349 (1977). The case at hand involves a sentencer which requested accurate information and was denied the same by the trial court, over objection of defense counsel. The position of the State of Louisiana that Ramos authorizes the sentencer to base its decision on uncertainty, perpetuated by the trial court, is legally inaccurate.

CONCLUSION

The State of Louisiana's Opposition to Petition for Writ of Certiorari contains two (2) serious errors. Factually, the record reflects that an objection was made to the trial court's response to the question by the jury, allegations to the contrary notwithstanding. Legally, the Ramos decision cannot reasonably be said to authorize a trial court to allow the sentencer in a capital

case to base its decision on gross uncertainty about the term of a life sentence. These errors should be noted by the Court in evaluating the Opposition filed by the State of Louisiana.

RESPECTFULLY SUBMITTED:

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IN THE

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CERTIFICATE

I do hereby certify that a copy of the above and foregoing Reply to Opposition to Petition for Writ of Certiorari to the Supreme Court of the United States was served upon respondent this day by depositing a copy of the aforesaid in the United States Mail, first class, postage prepaid to: Honorable Marion B. Farmer, District Attorney, Parish of St. Tammany, 428 East Boston, Covington, Louisiana 71433 and to the Honorable William J. Guste, Attorney General of the State of Louisiana, 234 Loyola Avenue, Seventh Floor, New Orleans, Louisiana 70112.

This 1 day of May, 1984.

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